

ESTTA Tracking number: **ESTTA404574**

Filing date: **04/19/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	Ovation LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	2800 28th Street, Suite 240 SANTA MONICA, CA 90405 UNITED STATES		

Attorney information	Elise Tenen-Aoki Greenberg Traurig LLP 2450 COLORADO AVENUE, SUITE 400E SANTA MONICA, CA 90405 UNITED STATES laipmail@gtlaw.com Phone:949-732-6587
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### Registrations Subject to Cancellation

Registration No	3755679	Registration date	03/02/2010
Registrant	OVATION, INC. Suite 200 3810 Bedford Ave. NASHVILLE, TN 37215 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 042. First Use: 2008/07/10 First Use In Commerce: 2008/10/00 All goods and services in the class are cancelled, namely: Design, development and maintenance of websites and web-based applications for others, design and development of multimedia products for use in corporate events, meetings and conferences, lighting design, graphics design, industrial design, visual design services in the nature of designing visual elements for online, broadcast, print, outdoor and other communication media, and set design services for corporate events
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### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
Dilution	Trademark Act section 43(c)		
Registration No	3755678	Registration date	03/02/2010
Registrant	OVATION, INC. Suite 200 3810 Bedford Ave. Nashville, TN 37215 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 038. First Use: 2008/07/10 First Use In Commerce: 2008/10/00 All goods and services in the class are cancelled, namely: Webcasting of live events and audio, data, graphics, video and multimedia data in connection therewith, video conferencing services, electronic
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transmission of music, audio, data, graphics and video, satellite broadcasting of live television special events
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## Grounds for Cancellation

Priority and likelihood of confusion		Trademark Act section 2(d)	
Dilution		Trademark Act section 43(c)	
Registration No	3670163	Registration date	08/18/2009
Registrant	OVATION, INC. 601 GRASSMERE PARK SUITE 22 NASHVILLE, TN 37211 UNITED STATES		

## Goods/Services Subject to Cancellation


Class 035. First Use: 2008/10/09 First Use In Commerce: 2008/10/09 All goods and services in the class are cancelled, namely: Business meeting planning, arranging and conducting business conferences and providing facilities for business meetings, providing on-line registrations services for business meetings and for live corporate business events
Class 038. First Use: 2008/10/09 First Use In Commerce: 2008/10/09 All goods and services in the class are cancelled, namely: Webcasting of live events and audio, data, graphics, video and multimedia data in connection therewith, video conferencing services, electronic transmission of music, audio, data, graphics and video, satellite broadcasting of live television special events
Class 041. First Use: 2008/10/09 First Use In Commerce: 2008/10/09 All goods and services in the class are cancelled, namely: Arranging and conducting educational conferences, special event planning consultation services
Class 042. First Use: 2008/10/09 First Use In Commerce: 2008/10/09 All goods and services in the class are cancelled, namely: Design, development and maintenance of websites and web-based applications for others, design and development of multimedia products for use in corporate events, meetings and conferences, lighting design, graphics design, industrial design, visual design services in the nature of designing visual elements for online, broadcast, print, outdoor and other communication media, and set design services for corporate events

## Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


## Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77943009	Application Date	02/23/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OVATION		

Design Mark	
Description of Mark	The mark consists of the term OVATION in stylized font with circles within circles design on top of the word.
Goods/Services	Class 038. First use: Cable television broadcasting services Class 041. First use: Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming; providing a website featuring programs and information relating to the arts, artists, entertainers, dance, music and prerecorded performances

U.S. Application No.	77894130	Application Date	12/15/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OVATION TV		
Design Mark			
Description of Mark	The mark consists of The words "OVATION TV" surrounded by three squares.		
Goods/Services	Class 038. First use: First Use: 2007/03/31 First Use In Commerce: 2007/03/31 Cable television broadcasting services Class 041. First use: First Use: 2007/03/31 First Use In Commerce: 2007/03/31 Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming		

U.S. Application No.	77943004	Application Date	02/23/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OVATION		

Design Mark	
Description of Mark	The mark consists of the term OVATION in stylized font with circles within circles design to the left of the word.
Goods/Services	Class 038. First use: Cable television broadcasting services Class 041. First use: Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming; providing a website featuring programs and information relating to the arts, artists, entertainers, dance, music and prerecorded performances

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	OVATION		
Goods/Services	Cable television broadcasting services Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming; providing a website featuring programs and information relating to the arts, artists, entertainers, dance, music and prerecorded performances		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	OVATION		
Goods/Services	Class 038, . Goods and Services: Cable television broadcasting services Class 041, . Goods and Services: Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming; providing a website featuring programs and information relating to the arts, artists, entertainers, dance, music and prerecorded performances		

Attachments	77943009#TMSN.jpeg ( 1 page )( bytes ) 77894130#TMSN.jpeg ( 1 page )( bytes ) 77943004#TMSN.jpeg ( 1 page )( bytes ) OVATION 3670163.pdf ( 7 pages )(695900 bytes ) OVATION 3755678.pdf ( 7 pages )(685594 bytes ) OVATION 3755679.pdf ( 7 pages )(685104 bytes )
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## **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Signature	/ETA/
Name	Elise Tenen-Aoki
Date	04/19/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 3,670,163

For the mark OVATION

Registered on August 18, 2009

Ovation, LLC, a Delaware Limited Liability  
Company,

Petitioner,

vs.

Ovation, Inc., a Tennessee Corporation,

Registrant.

Cancellation No. \_\_\_\_\_

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**PETITION FOR CANCELLATION**

1. Petitioner Ovation, LLC (“Petitioner”) is a Delaware limited liability company located at 2800 28th Street, Suite 240, Santa Monica, California 90405.

2. Upon information and belief, Registrant Ovation, Inc. (“Registrant”) is a Tennessee corporation located at 601 Grassmere Park, Suite 22, Nashville, Tennessee 37211.

3. The mark subject to this Petition for Cancellation is the mark “OVATION”, Registration No. 3,670,163 (the “Challenged Registration”), which was filed on December 12, 2007, and registered on August 18, 2009, in connection with “Business meeting planning, arranging and conducting business conferences and providing facilities for business meetings,

providing on-line registrations services for business meetings and for live corporate business events” in International Class 35; “Webcasting of live events and audio, data, graphics, video and multimedia data in connection therewith, video conferencing services, electronic transmission of music, audio, data, graphics and video, satellite broadcasting of live television special events” in International Class 38; “Arranging and conducting educational conferences, special event planning consultation services” in International Class 41; and “Design, development and maintenance of websites and web-based applications for others, design and development of multimedia products for use in corporate events, meetings and conferences, lighting design, graphics design, industrial design, visual design services in the nature of designing visual elements for online, broadcast, print, outdoor and other communication media, and set design services for corporate events” in International Class 42. The Cited Registration claims a first use date of October 9, 2008, and a first use in commerce date of October 9, 2008.

4. Petitioner has been and will continue to be damaged by the continued registration of Registrant’s “OVATION” mark, Registration No. 3,670,163, and hereby petitions for cancellation of the same.

5. Petitioner, with and/or through its predecessor in interest, has been using the word mark “OVATION” continuously in commerce since at least as early as 1995 in connection with television broadcasting services, the development and production of television programs and motion picture films to be broadcast over a variety of platforms, television programming, a web



site, and other services. In addition, Petitioner has been using the mark continuously in commerce since at least as early as March 31, 2007 in connection with the

services specified in Petitioner's Application Serial No. 77/894,130, described below, among other services.

6. By virtue of Petitioner's extensive use, promotion, and advertising of its services and marks, its marks are recognized by the relevant public as identifying broadcasting, development, production, programming, web site, and other services finding their origin or otherwise associated with Petitioner. Accordingly, Petitioner's marks are strong, distinctive, and famous in the United States within the meaning of the Lanham Act.

7. On December 15, 2009, Petitioner filed an application with the United States



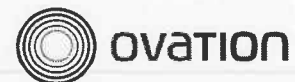
Patent and Trademark Office ("USPTO") to register the mark (Application Serial No. 77/894,130) in connection with "Cable television broadcasting services" in International Class 38 and "Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming" in International Class 41.

8. On February 23, 2010, Petitioner filed applications with the USPTO to register the



mark

(Application Serial No. 77/943,009), and the mark



(Application Serial No. 77/943,004), in connection with "Cable television broadcasting services" in International Class 38 and "Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to



be broadcast over television, cable and satellite; cable television programming; providing a website featuring programs and information relating to the arts, artists, entertainers, dance, music and prerecorded performances” in International Class 41 (together with Application Serial No. 77/894,130, “Petitioner’s Applications”).

9. The Trademark Examining Attorney reviewing Petitioner’s Applications issued office actions in connection with each of these applications, refusing registration on the ground that there is a likelihood of confusion between the applied-for marks and the mark in the Challenged Registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), in that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the Petitioner and Registrant. The Trademark Examining Attorney found, among other things, that the similarities between the marks, the services of the parties and similarity of trade channels create a likelihood of confusion. Thus, the Challenged Registration has been cited against Petitioner’s Applications as a basis for refusal of registration of Petitioner’s marks.

10. The date of Petitioner’s first use in commerce of the word mark “OVATION” is prior to the filing date of Registrant’s application that matured into the Challenged Registration, and also prior to Registrant’s date of first use of the mark in the Cited Registration.



11. The date of Petitioner’s first use in commerce of the mark is prior to the filing date of Registrant’s application that matured into the Challenged Registration, and also prior to Registrant’s date of first use of the mark in the Cited Registration.

12. The services provided by Registrant in connection with the mark “OVATION”, including, but not limited to, the services identified in the Cited Registration, overlap with the



services that Petitioner offers in connection with its marks “OVATION” and .

To the extent that the services do not overlap, Registrant’s services are commercially related to and/or a natural expansion of the services offered by Petitioner. Moreover, Registrant’s services are or potentially will be offered broadly to all consumers, including consumers of Petitioner’s services.

13. Registrant’s mark “OVATION” is confusingly similar to Petitioner’s marks



“OVATION” and . Consumers viewing Registrant’s mark are likely to be confused as to source and to perceive an association with Petitioner. It is likely that consumers will mistakenly believe that Registrant’s mark is connected to or associated with Petitioner, or that Petitioner has, to some degree, sponsored or endorsed Registrant’s services. Accordingly, Registrant’s mark is likely to cause confusion, mistake and/or deception among the consuming public regarding the source, affiliation and/or sponsorship between Petitioner and its services and Registrant and its services.

14. In addition, Registrant’s mark “OVATION” is so similar to Petitioner’s prior and famous marks as to dilute the distinctive quality of Petitioner’s marks.

15. The continued registration of the mark in the Cited Registration for the services identified therein is inconsistent with Petitioner’s superior rights in Petitioner’s marks



"OVATION" and , and has caused and will continue to cause damage to  
Petitioner and Petitioner's rights in its marks. By virtue of Petitioner's superior rights, the Cited  
Registration is subject to cancellation and should be cancelled.

WHEREFORE, Petitioner prays that U.S. Trademark Registration No. 3,670,163 be  
canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

GREENBERG TRAURIG, LLP

Dated: April 19, 2011

By: Elise Tenen-Aoki

Elise Tenen-Aoki

Wendy M. Mantell

Joseph Geisman

2450 Colorado Avenue, Suite 400E

Santa Monica, CA 90404

Tel: (310) 586-6568

Fax: (310) 586-0564

Attorneys for Ovation, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> day of April, 2011, I transmitted electronically (E-Mail), a true and correct copy of the foregoing **PETITION FOR CANCELLATION** upon Registrant to the following:

Robert L. Brewer  
Bass, Berry & Sims PLC  
Suite 2800  
150 3rd Avenue South  
Nashville TN 37201

[rbrewer@bassberry.com](mailto:rbrewer@bassberry.com)

A handwritten signature in black ink, appearing to read 'Angela Williams', written over a horizontal line.

Angela Williams

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 3,755,678



For the mark  
Registered on March 2, 2010

Ovation, LLC, a Delaware Limited Liability  
Company,

Petitioner,

vs.

Ovation, Inc., a Tennessee Corporation,

Registrant.

Cancellation No. \_\_\_\_\_

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**PETITION FOR CANCELLATION**

1. Petitioner Ovation, LLC ("Petitioner") is a Delaware limited liability company located at 2800 28th Street, Suite 240, Santa Monica, California 90405.
2. Upon information and belief, Registrant Ovation, Inc. ("Registrant") is a Tennessee corporation located at 601 Grassmere Park, Suite 22, Nashville, Tennessee 37211.



3. The mark subject to this Petition for Cancellation is the mark ,  
Registration No. 3,755,678 (the “Challenged Registration”), which was filed on October 9, 2008,  
and registered on March 2, 2010, in connection with “Webcasting of live events and audio, data,  
graphics, video and multimedia data in connection therewith, video conferencing services,  
electronic transmission of music, audio, data, graphics and video, satellite broadcasting of live  
television special events” in International Class 38. The Cited Registration claims a first use date  
of July 10, 2008, and a first use in commerce date of October 2008.

4. Petitioner has been and will continue to be damaged by the continued registration



of Registrant’s mark, Registration No. 3,755,678, and hereby petitions for  
cancellation of the same.

5. Petitioner, with and/or through its predecessor in interest, has been using the word  
mark “OVATION” continuously in commerce since at least as early as 1995 in connection with  
television broadcasting services, the development and production of television programs and  
motion picture films to be broadcast over a variety of platforms, television programming, a web



site, and other services. In addition, Petitioner has been using the mark  
continuously in commerce since at least as early as March 31, 2007 in connection with the  
services specified in Petitioner’s Application Serial No. 77/894,130, described below, among  
other services.

6. By virtue of Petitioner's extensive use, promotion, and advertising of its services and marks, its marks are recognized by the relevant public as identifying broadcasting, development, production, programming, a web site, and other services finding their origin or otherwise associated with Petitioner. Accordingly, Petitioner's marks are strong, distinctive, and famous in the United States within the meaning of the Lanham Act.

7. On December 15, 2009, Petitioner filed an application with the United States



Patent and Trademark Office ("USPTO") to register the mark (Application Serial No. 77/894,130) in connection with "Cable television broadcasting services" in International Class 38 and "Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming" in International Class 41.

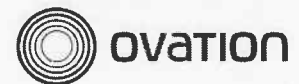
8. On February 23, 2010, Petitioner filed applications with the USPTO to register the



ovation

mark

(Application Serial No. 77/943,009), and the mark



ovation


(Application Serial No. 77/943,004), in connection with "Cable television broadcasting services" in International Class 38 and "Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming; providing a website featuring programs and information relating to the arts, artists, entertainers, dance, music


and prerecorded performances” in International Class 41 (together with Application Serial No. 77/894,130, “Petitioner’s Applications”).

9. The Trademark Examining Attorney reviewing Petitioner’s Applications issued office actions in connection with each of these applications, refusing registration on the ground that there is a likelihood of confusion between the applied-for marks and the mark in the Challenged Registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), in that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the Petitioner and Registrant. The Trademark Examining Attorney found, among other things, that the similarities between the marks, the services of the parties and similarity of trade channels create a likelihood of confusion. Thus, the Challenged Registration has been cited against Petitioner’s Applications as a basis for refusal of registration of Petitioner’s marks.

10. The date of Petitioner’s first use in commerce of the word mark “OVATION” is prior to the filing date of Registrant’s application that matured into the Challenged Registration, and also prior to Registrant’s date of first use of the mark in the Cited Registration.



11. The date of Petitioner’s first use in commerce of the mark  is prior to the filing date of Registrant’s application that matured into the Challenged Registration, and also prior to Registrant’s date of first use of the mark in the Cited Registration.

12. The services provided by Registrant in connection with the mark , including, but not limited to, the services identified in the Challenged



Registration, overlap with the services that Petitioner offers in connection with its marks



“OVATION” and . To the extent that the services do not overlap, Registrant’s services are commercially related to and/or a natural expansion of the services offered by Petitioner. Moreover, Registrant’s services are or potentially will be offered broadly to all consumers, including consumers of Petitioner’s services.



13. Registrant’s mark is confusingly similar to Petitioner’s marks



“OVATION” and . Consumers viewing Registrant’s mark are likely to be confused as to source and to perceive an association with Petitioner. It is likely that consumers will mistakenly believe that Registrant’s mark is connected to or associated with Petitioner, or that Petitioner has, to some degree, sponsored or endorsed Registrant’s services. Accordingly, Registrant’s mark is likely to cause confusion, mistake and/or deception among the consuming public regarding the source, affiliation and/or sponsorship between Petitioner and its services and Registrant and its services.



14. In addition, Registrant’s mark is so similar to Petitioner’s prior and famous marks as to dilute the distinctive quality of Petitioner’s marks.

15. The continued registration of the mark in the Cited Registration for the services identified therein is inconsistent with Petitioner’s superior rights in Petitioner’s marks



"OVATION" and , and has caused and will continue to cause damage to  
Petitioner and Petitioner's rights in its marks. By virtue of Petitioner's superior rights, the Cited  
Registration is subject to cancellation and should be cancelled.

WHEREFORE, Petitioner prays that U.S. Trademark Registration No. 3,755,678 be  
canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

GREENBERG TRAURIG, LLP

Dated: April 19, 2011

By: Elise Tenen-Aoki

Elise Tenen-Aoki

Wendy M. Mantell

Joseph Geisman

2450 Colorado Avenue, Suite 400E

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Tel: (310) 586-6568

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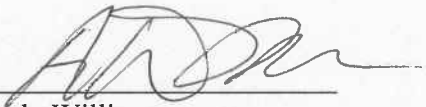
Attorneys for Ovation, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> day of April, 2011, I transmitted electronically (E-Mail), a true and correct copy of the foregoing **PETITION FOR CANCELLATION** upon Registrant to the following:

Robert L. Brewer  
Bass, Berry & Sims PLC  
Suite 2800  
150 3rd Avenue South  
Nashville TN 37201

[rbrewer@bassberry.com](mailto:rbrewer@bassberry.com)

  
Angela Williams

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 3,755,679



For the mark  
Registered on March 2, 2010

Ovation, LLC, a Delaware Limited Liability  
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2. Upon information and belief, Registrant Ovation, Inc. (“Registrant”) is a Tennessee corporation located at 601 Grassmere Park, Suite 22, Nashville, Tennessee 37211.



3. The mark subject to this Petition for Cancellation is the mark , Registration No. 3,755,679 (the “Challenged Registration”), which was filed on October 9, 2008, and registered on March 2, 2010, in connection with “Design, development and maintenance of websites and web-based applications for others, design and development of multimedia products for use in corporate events, meetings and conferences, lighting design, graphics design, industrial design, visual design services in the nature of designing visual elements for online, broadcast, print, outdoor and other communication media, and set design services for corporate events” in International Class 42. The Cited Registration claims a first use date of July 10, 2008, and a first use in commerce date of October 2008.

4. Petitioner has been and will continue to be damaged by the continued registration of Registrant’s  mark, Registration No. 3,375,679, and hereby petitions for cancellation of the same.

5. Petitioner, with and/or through its predecessor in interest, has been using the word mark “OVATION” continuously in commerce since at least as early as 1995 in connection with television broadcasting services, the development and production of television programs and motion picture films to be broadcast over a variety of platforms, television programming, a web

site, and other services. In addition, Petitioner has been using the mark  continuously in commerce since at least as early as March 31, 2007, in connection with the

services specified in Petitioner's Application Serial No. 77/894,130, described below, among other services.

6. By virtue of Petitioner's extensive use, promotion, and advertising of its services and marks, its marks are recognized by the relevant public as identifying broadcasting, development, production, programming, web site, and other services finding their origin or otherwise associated with Petitioner. Accordingly, Petitioner's marks are strong, distinctive, and famous in the United States within the meaning of the Lanham Act.

7. On December 15, 2009, Petitioner filed an application with the United States



Patent and Trademark Office ("USPTO") to register the mark (Application Serial No. 77/894,130) in connection with "Cable television broadcasting services" in International Class 38 and "Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to be broadcast over television, cable and satellite; cable television programming" in International Class 41.

8. On February 23, 2010, Petitioner filed applications with the USPTO to register the



ovation

mark

(Application Serial No. 77/943,009), and the mark



ovation

(Application Serial No. 77/943,004), in connection with "Cable television broadcasting services" in International Class 38 and "Development and production of television programs to be broadcast over television, iptv, Internet, cable and satellite; production of motion picture films to

be broadcast over television, cable and satellite; cable television programming; providing a website featuring programs and information relating to the arts, artists, entertainers, dance, music and prerecorded performances” in International Class 41 (together with Application Serial No. 77/894,130, “Petitioner’s Applications”).

9. The Trademark Examining Attorney reviewing Petitioner’s Applications issued office actions in connection with each of these applications, refusing registration on the ground that there is a likelihood of confusion between the applied-for marks and the mark in the Challenged Registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), in that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the Petitioner and Registrant. The Trademark Examining Attorney found, among other things, that the similarities between the marks, the services of the parties and similarity of trade channels create a likelihood of confusion. Thus, the Challenged Registration has been cited against Petitioner’s Applications as a basis for refusal of registration of Petitioner’s marks.

10. The date of Petitioner’s first use in commerce of the word mark “OVATION” is prior to the filing date of Registrant’s application that matured into the Challenged Registration, and also prior to Registrant’s date of first use of the mark in the Cited Registration.



11. The date of Petitioner’s first use in commerce of the mark is prior to the filing date of Registrant’s application that matured into the Challenged Registration, and also prior to Registrant’s date of first use of the mark in the Challenged Registration.

12. The services provided by Registrant in connection with the mark



, including, but not limited to, the services identified in the Challenged Registration, overlap with the services that Petitioner offers in connection with its marks



“OVATION” and . To the extent that the services do not overlap, Registrant’s services are commercially related to and/or a natural expansion of the services offered by Petitioner. Moreover, Registrant’s services are or potentially will be offered broadly to all consumers, including consumers of Petitioner’s services.



13. Registrant’s mark is confusingly similar to Petitioner’s marks



“OVATION” and . Consumers viewing Registrant’s mark are likely to be confused as to source and to perceive an association with Petitioner. It is likely that consumers will mistakenly believe that Registrant’s mark is connected to or associated with Petitioner, or that Petitioner has, to some degree, sponsored or endorsed Registrant’s services. Accordingly, Registrant’s mark is likely to cause confusion, mistake and/or deception among the consuming public regarding the source, affiliation and/or sponsorship between Petitioner and its services and Registrant and its services.





14. In addition, Registrant's mark is so similar to Petitioner's prior and famous marks as to dilute the distinctive quality of Petitioner's marks.

15. The continued registration of the mark in the Cited Registration for the services identified therein is inconsistent with Petitioner's superior rights in Petitioner's marks



"OVATION" and , and has caused and will continue to cause damage to Petitioner and Petitioner's rights in its marks. By virtue of Petitioner's superior rights, the Cited Registration is subject to cancellation and should be cancelled.

WHEREFORE, Petitioner prays that U.S. Trademark Registration No. 3,375,679 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

GREENBERG TRAURIG, LLP

Dated: April 19, 2011

By: Elise Tenen-Aoki

Elise Tenen-Aoki

Wendy M. Mantell

Joseph Geisman

2450 Colorado Avenue, Suite 400E

Santa Monica, CA 90404

Tel: (310) 586-6568

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Attorneys for Ovation, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> day of April, 2011, I transmitted electronically (E-Mail), a true and correct copy of the foregoing **PETITION FOR CANCELLATION** upon Registrant to the following:

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Bass, Berry & Sims PLC  
Suite 2800  
150 3rd Avenue South  
Nashville TN 37201

[rbrewer@bassberry.com](mailto:rbrewer@bassberry.com)

  
Angela Williams

LA129,449,060 v1